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Supreme Court
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NO. 88-2028

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

EDDIE THOMPSON, JR.,

Petitioner

vs.

HONORABLE RAYMOND E. LAPE, JR.,

Respondent

REPLY AND/OR SUPPLEMENTAL BRIEF

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FIRST AMENDMENT U.S. CONST.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance.

FOURTEENTH AMENDMENT U.S. CONST.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SUPREME COURT RULE 22.4

Upon the filing of a brief in opposition, or the expiration of the time allowed therefor, or express waiver of the right to file, the petition and brief, if any, will be distributed by the Clerk of the Court for its consideration. However, if a cross-petition for certiorari has been filed, distribution of both it and the petition for certiorari will be delayed until the filing of a brief in opposition by the cross-respondent, or the expiration of the time allowed therefor, or express waiver of the right to file.

SUPREME COURT RULE 28.3

Whenever any pleading, motion, *notice*, brief, or other document is required by these Rules to be served, such service may be made personally or by mail on each party to the proceeding at or before the time of filing. If the document has been produced under Rule 33, three copies shall be served on each other party separately represented in the proceeding. If the document is typewritten, service of a single copy on each other party separately represented shall suffice. If personal service is made, it may consist of delivery, at the office of counsel of record, to counsel or an employee therein. If ser-

vice is by mail, it shall consist of depositing the document in a United States Post Office or Mailbox, with first-class postage prepaid, addressed to counsel of record at his post office address. Where a party is not represented by counsel, service shall be upon the party, personally or by mail.

KENTUCKY CONSTITUTION § 14

All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

KENTUCKY CONSTITUTION § 176

The Commonwealth shall not assume the debt of any county, municipal corporation or political subdivision of the State, unless such debt shall have been contracted to defend itself in time of war, to repeal invasion or to suppress insurrection.

KENTUCKY CONSTITUTION § 177

The credit of the Commonwealth shall not be given, pledged or loaned to any individual, company, corporation or association, municipality, or political subdivision of the State.

K.R.S. 15.020

The attorney general is the chief law officer of the Commonwealth of Kentucky and all of its departments, commissions, agencies, and political subdivisions, and the legal adviser of all state officers, departments, commissions, and agencies, and when requested in writing shall furnish to them his written opinion touching any of their official duties, and shall prepare proper drafts of all instruments of writing required for public use, and shall exercise all common law duties and authority pertaining to the office of the attorney general under the common law, except when modified by statutory enactment. He shall appear for the Commonwealth

in all cases in the Supreme Court or Court of Appeals wherein the Commonwealth is interested, and shall also commence all actions or enter his appearance in all cases, hearings, and proceedings in and before all other courts, tribunals, or commissions in or out of the state, and attend to all litigation and legal business in or out of the state required of him by law, or in which the Commonwealth has an interest, and any litigation or legal business that any state officer, department, commission, or agency may have in connection with, or growing out of, his or its official duties, except where it is made the duty of the commonwealth's attorney or county attorney to represent the Commonwealth. When any attorney is employed for any said agency, the same shall have the approval of such agency before such employment.

K.R.S. 454.350

(1) Every circuit and district judge shall, when at all possible, issue a written judgment or order in all civil actions which have been submitted for final adjudication within ninety (90) days from the date the action was taken under submission.

(2) Where a report, findings, or recommendations of a commissioner or hearing officer are required by statute or rule as a prerequisite to an order or judgment by the circuit or district court the same shall be filed within ninety (90) days of the conclusion of the trial or hearing at which the commissioner or hearing officer presided.

(3) Every circuit and district judge shall at the end of every month certify in writing to the chief justice of the Supreme Court all cases which have been submitted for final adjudication for longer than ninety (90) days and have not been adjudicated and certify in writing to the chief justice of the Supreme Court the reason for the delay.

(4) Any district or circuit judge who knowingly violates any of the provisions of this section shall be subject to removal by the judicial retirement and removal commission.

KY SCR 4.300 (3) A (4)

A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

KY CR 76.36 (7) (h)

Briefs in response to an appeal or cross-appeal shall be required. Such briefs shall be filed in accord with the provisions of CR 76.12(2)(a) and (b).

Where an appeal is taken against a judge in the Court of Justice and concerns performance of an official act, the party appealing shall serve notice on the real party in interest as defined in this Rule, Section (8), who shall then be required to file a brief on behalf of the judge against whom the appeal or cross-appeal is taken; provided, however, no attorney shall be required or permitted to file such a brief where to do so would conflict with the interest of his client.

KY CR 5.03

Whenever any pleading or other paper is served under Rules 5.01 and 5.02, proof of the time and manner of such service shall be filed before action is to be taken thereon by the court of the parties. Proof may be by certificate of a member of the bar of the court or by affidavit of the person who served the papers or by any other proof satisfactory to the court. Such certificate or affidavit shall identify by name the persons so served.

NO. 88-2028

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

EDDIE THOMPSON, JR.,

Petitioner

vs.

HONORABLE RAYMOND E. LAPE, JR.,

Respondent

REPLY AND/OR SUPPLEMENTAL BRIEF

Comes now Petitioner and objects to the Office of the Attorney General of Kentucky and/or his Assistants filing briefs, letters and/or other documents on behalf of the Honorable Raymond E. Lape, Jr., Respondent herein or other litigants, wherein the Commonwealth of Kentucky has no "real interest or legal business," in the case.

On July 6, 1989, Mrs. V. Lynne Schroering, an Assistant Attorney General of Kentucky, wrote a letter to Mr. Joseph Spaniol, Jr., Clerk of the U.S. Supreme Court, on behalf of Respondent, expressly waiving Respondent's rights under Supreme Court Rule 22.4, to file a brief in opposition to the Petition for Writ of Certiorari, unless otherwise directed by this Court.[1] App. P. 1a

[1] When a party has failed to file a brief in opposition within the time allowed therefor or expressly waived his rights to file said brief, Supreme Court Rule 22.4 makes no provisions for the Court to enlarge the time to file a brief in opposition to a Petition for a Writ of Certiorari.

On June 29, 1989, Mrs. V. Lynne Schroering, wrote a letter to Mr. Spaniol, on behalf of Mr. Joseph Condit, and Judge Douglas Stephens, Respondents in *Thompson* v. *City of Covington, Peoples Bank, et al.*, Supreme Court No. 88-1965, waiving Respondents' rights, under Supreme Court Rule 22.4, to file a brief in opposition to the Petition for Writ of Certiorari, unless otherwise directed by the Court.[1] App. P. 2a.

Mrs. V. Lynne Schroering did not service a copy of her July 6 letter, App. P. 1a, or her June 29 letter (App. P. 2a), upon the appropriate parties as required by Supreme Court Rule 28.3.[2]

Mrs. Schroering's letter of July 6, should have been served upon Mr. Joseph Condit, City Solicitor, for the City of Covington, "real party in interest[2], Mr. Stephen T. McMurtry, Assistant City Solicitor, for City of Covington, and Judge Lape.

Mrs. Schroering's letter of June 29, should have been served upon Mr. Joseph Condit, City Solicitor for the City of Covington, real party in interest[2], Mr. Stephen T. McMurtry, Assistant City Solicitor and attorney of record for the City of Covington, Police Officer, Thomas Epperson, Todd Finan and Henry Warden; Mr. Martin Huelsmann, Attorney of record for John Elfers; and Mr. Richard Nelson, Pro Se and attorney of record for Peoples Liberty Bank and Ralph Haile.

Mrs. Schroering has neglected to make service as required by Supreme Court Rule 28.3; because service on the "real parties in interest" would show the Office of the Attorney General is rendering legal service to Judge Lape, The City of Covington, Mr. Joseph Condit, Judge Stephens and others in violation of KY CR 76.36(7)(h) and 76.36(8)[3], SCR 4.300

[2] Supreme Court Rule 28.3 requires that Notice be served on all interested parties.

[3] These Rules required that the City of Covington as the "real party in interest," file a Response to an Appeal in an accord with the provisions of KY

Canon (3) A (4), K.R.S. 15.020 and 454.350, and/or the KY Constitution §§ 176 and 177.

We may note that neither Mrs. Schroering, nor the Office of the Attorney General is Attorney of record in the trial court (KY Court of Appeals[4] for Judge Lape or claim any authority, duty or interest in attempting to defend Judge Lape's failure and/or refusal to give full faith and credit to a Federal Judgment, contrary to Article IV, § 1, 28 U.S.C. § 1738 and K.R.S. 422.040; and who refuses to enter a final Order in two (2) Criminal cases[5], pursuant to K.R.S. 454.350. See *Thompson* v. *City of Covington, et al.*, Supreme Court No. 88-1965. Complaint items Nos. 4(f), 27-33, App. P. 7a and 10a.

Arguendo, if Judge Lape entered a final Order in *Thompson* v. *Covington Housing Development Corporation*, Kenton

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Cr 76.12(2)(a) . . . unless to do so would conflict with the interest of their client (Judge Lape). The failure and/or refusal on the part of the City of Covington to file a brief on behalf of the Honorable Raymond E. Lape admits a conflict. Mrs. Schroering's letters of July 6 and June 29, App. P. 1a and 2a, merely compound these conflicts of interest and abate the public interest and trust.

[4] Judge Lape proceeded Pro Se in the Kentucky Court of Appeals (trial court). Judge Lape neglected to serve a copy of his Response to the Petition for Writ of Mandamus as required by KY CR 5.03, which requires that service be made on all interested parties. (City of Covington, Mr. Joseph Condit, City Solicitor, City of Covington, Mr. Stephen T. McMurtry, Assistant City Solicitor and counsel of record) Usually the Court refuses to accept papers that are not served on the "real party in interest."

[5] These two (2) cases involve charges of alleged harassment and malicious prosecution by City Officials to aid and abet Richard Nelson and Peoples Liberty Bank in an alleged illegal foreclosure. At a pre-trial conference in Federal Court, Mr. Nelson admitted, inter alia, that (1) Peoples Liberty Bank lost the possessory action (*Thompson* v. *Peoples Liberty Bank*, Kenton County Court No. 33430, KY Court of Appeals No. 79-CA-1456-MR. See *Thompson* v. *City of Covington, et al.*, Supreme Court No. 88-1965, App. P. 18a) and (2) He (Nelson and Peoples Liberty Bank) hired City of Covington Police Officers, at a rate of five (5) dollars an hour, and a criminal attorney to forcibly take possession of Petitioner's home and personal possessions. The Federal Judge declined to decide the case because of the State Law issues involved, but the Federal Judge consolidated all claims and issues (Federal and State) before the Court.

Circuit Court No. 87-CI-773, why didn't Judge Lape or the City of Covington present that Order to the Court? Obviously no such Order exists.

With the knowledge that he (Judge Lape) had not entered a final Order in Kenton Circuit Court cases No. 17936[6] or 18227 A & B, and over Petitioner's objections, Judge Lape appointed the Honorable Jack Arnold[7] to hear *Thompson* v. *City of Covington, et al.*, Kenton Circuit Court No. 86-CI-1535, Supreme Court No. 1965, NR 13, 14, (App. P. 2a).

The Writ of Mandamus is a remedy to compel any person, Corporation, Public Functionary or Tribunal, to perform some duty required by law, where the party seeking relief has no other legal remedy and the duty sought to be enforced is clear and indisputable. *Knox County* v. *Aspinwall*, 65 U.S. 735, S.C. 24 How., 376-386.

Under Statute setting forth time within which Judge, commissioner or hearing officer must issue judgment or report certification of reason delay occurs, to avoid prolonged indecision, mandatory writ should be used to rectify situation and if this be to no avail, then extreme remedy of removal is provided. K.R.S. 454.350. *Dubick* v. *Dubick*, 653 S.W. 652.

In a private litigation, the Attorney General may intervene, (only) where the rights and interest of the people of the state are involved. *Van Riper* v. *Jenkins*, 45 A2d 844.

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[6] The records of the Kenton Circuit Court reveal that the Clerk of the Court entered an Order signed by Judge Lape in *Commonwealth of Kentucky, for the use and benefit of, City of Covington* v. *Patricia Thompson*, No. 17936, on August 3, 1979. In said Order, Judge Lape ordered, inter alia, the cash bond returned to depositors, Patricia and Eddie Thompson, Jr., and placed Patricia Thompson on her own recognizance until further Order of his Court. The Records of the Kenton Circuit Court show that Judge Lape has entered no further Orders in said cases.

[7] K.R.S. 26A.015(3)(a) provides that, Any Justice or Judge of the Court of Justice disqualified under the provisions of this section shall be replaced by the Chief Justice.

CONCLUSION

The relief sought here is provide for by K.R.S. 454.350, KY CR. 76.36 and KY SCR 4.300 Canon (3) A (4).

The failure of Judge Lape to enter a final Order in these three (3) cases, deny Petitioner access to the Courts in violation of the KY Constitution § 14 and the First Amendment, U.S. Constitution, for which Petitioner has no other remedy.

The efforts by the Kentucky Attorney General are "ex parte" on behalf of the City of Covington and in violation of KY SCR 4.300 Canon (3) A (4) and KY CR 76.36(7)(h).

Respectfully Submitted,

Eddie Thompson, Jr.
P.O. Box 1221
Covington, KY 41011
(606) 491-6278

AFFIDAVIT IN PROOF OF SERVICE

Comes now Eddie Thompson, Jr., Petitioner herein, first being duly cautioned and sworn and states as follows:

On August ____, 1989, I deposited in the mail 3 copies of the instant Repy and/or Supplemental Brief, in duly addressed envelopes, with first class postage prepaid to:

Honorable Raymond E. Lape, Jr., Kenton Circuit Judge, Room 509, County Building, Covingtion, KY 41011

Mr. Joseph Codit, City Solicitor, City of Covington, 18 Pike Street, Covington, KY 41011

Mr. Stephen T. McMurtry, Assistant City Solicitor, City of Covington, 308 Greenup Street, Covington, KY 41011

Mr. Frederic Cowan, Attorney General, Mr. E. Douglas Richards, Assisstant Attorney General, Mrs. V. Lynne Schroering, Assistant Attorney General, Capitol Building, Frankfort, KY 40601

Mr. Jack Scott, Clerk, Kentucky Court of Appeals, 403 Wapping Street, Frankfort, KY 40601

Mr. Don Buring, Commonwealth Attorney, 6th Floor, County Building, Covington, KY 41011

Mr. Richard Nelson, 11 West 6th Street, P.O. Box 1209, Covington, KY 41011

Mr. Martin Huelsmann, 88 Thompson Avenue, Ft. Mitchell, KY 41017

Ms. Karla Katakis, Chief Legal Counsel, Administrative Office of the Court, 403 Wapping Street, Frankfort, KY 41011

The Solicitor General, Department of Justice, Washington, D.C. 20530.

_____
Eddie Thompson, Jr.

Subscribed and sworn to before me this _____ day of August, 1989.

_____ _____
My Commission expires Notary

APPENDIX

[LETTERHEAD OF OFFICE OF THE ATTORNEY GENERAL, COMMONWEALTH OF KENTUCKY]

July 6, 1989

Mr. Joseph F. Spaniol, Jr., Clerk
Supreme Court of the United States
1 First Street N.E.
Washington, D.C. 20543

Re: Eddie Thompson, Jr. v. Hon. Raymond E. Lape, Jr., Kenton Circuit Judge, No. 88-2028

Dear Mr. Spaniol:

The respondent, Hon. Raymond E. Lape, Jr., Kenton Circuit Judge, expressly waives his right under Rule 22.4 to file a brief in opposition to the Petition for Writ of Certiorari, unless otherwise directed by this Court.

Respectfully,

FREDERICK J. COWAN
ATTORNEY GENERAL

/s/ V. LYNNE SCHROERING
Assistant Attorney General
(502) 564-7600

VLS/mja
cc: Eddie Thompson, Jr.

[LETTERHEAD OF OFFICE OF THE ATTORNEY GENERAL, COMMONWEALTH OF KENTUCKY]

June 29, 1989

Mr. Joseph F. Spaniol, Jr., Clerk
Supreme Court of the United States
1 First Street N.E.
Washington, D.C. 20543

Re: Patricia and Eddie Thompson, Jr. v. City of Covington, et al., No. 88-1965

Dear Mr. Spaniol:

The respondents, Joseph Condit and Douglas Stephens, expressly waive their right under Rule 22.4 to file a brief in opposition to the Petition for Writ of Certiorari, unless otherwise directed by this Court.

Respectfully,

FREDERICK J. COWAN
ATTORNEY GENERAL

/s/ V. LYNNE SCHROERING
Assistant Attorney General
(502) 564-7600

VLS/mja
cc: Patricia & Eddie Thompson, Jr.